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BANKERS STANDARD INSURANCE  
COMPANY and ACE PROPERTY AND  
CASUALTY INSURANCE COMPANY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JACK D. HARRISON and NAOMA  
HARRISON,

**Plaintiffs,**

VS.

BANKERS STANDARD INSURANCE COMPANY, ACE PROPERTY AND CASUALTY INSURANCE COMPANY, AMERICAN FAMILY MUTUAL INSURANCE COMPANY and BBVA COMPASS INSURANCE AGENCY, INC.; and DOES 1 through 50,

### Defendants.

Case No. 13CV1682 DMS JMA

**OBJECTIONS TO  
DECLARATIONS OF RICHARD  
MASTERS, JACK D. HARRISON,  
AND JAMES B. PANTHER IN  
SUPPORT OF DEFENDANTS  
BANKERS STANDARD  
INSURANCE CO.'S AND ACE  
PROPERTY AND CASUALTY  
INSURANCE CO.'S REPLY TO  
OPPOSITION TO MOTION TO  
DISMISS**

**DATE:** November 8, 2013  
**TIME:** 1:30 p.m.  
**COURTROOM:** 13A

*Judge Dana M. Sabraw*

Defendants Ace Property and Casualty Insurance Company ("AP&C") and Bankers Standard Insurance Company ("Bankers Standard") (collectively "Defendants") hereby object to the Declarations of Richard Masters, Jack D. Harrison, and James B. Panther filed in support of Plaintiffs' Opposition to Defendants' F.R.C.P. 12(b)(6) Motion to Dismiss pursuant to the Federal Rules of Evidence and other applicable law as set forth below:

1       Defendants object to the Declaration of Richard Masters ("Masters  
 2 Declaration") in its entirety pursuant to F.R.E. 402 and 702 because:

3                     (1) it is irrelevant. Mr. Masters' opinions concerning the interpretation of  
 4 the policy provisions of Plaintiffs' insurance policy is irrelevant as the  
 5 Bankers Standard policy speaks for itself. "If contractual language is  
 6 clear and explicit, it governs." *Boghos v. Certain Underwriters at Lloyd's*  
 7 *of London*, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting  
 8 *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638; and  
 9                     (2) to the extent that the Masters Declaration does purport to opine on the  
 10 issues before the Court, it does so in the form of bare conclusions of law  
 11 which invade the province of this Court. Under California law, the  
 12 interpretation of an insurance policy is a question of law for the court.  
 13 *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228  
 14 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr.  
 15 2d 370 (1995). An expert witness cannot give an opinion on an issue of  
 16 law or provide legal conclusions. *See, e.g., Nationwide Transport*  
 17 *Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir.  
 18 2008).

19       2. Defendants object to the Declaration of James B. Panther ("Panther  
 20 Declaration") in its entirety pursuant to F.R.E. 402 and 702 on the same bases as  
 21 outlined above in regard to Masters Declaration.

22       3. Defendants object to the specific portions of the Declaration of Jack D.  
 23 Harrison ("Harrison Declaration") as outlined below.

24                     In addition, specific portions of the Masters Declaration, Harrison Declaration,  
 25 and Panther Declaration are objectionable pursuant to the Federal Rules of Evidence  
 26 and other applicable law as set forth below. For the convenience of the Court, where  
 27 possible, certain paragraphs have been grouped together.

## **SPECIFIC OBJECTIONS**

## I. Masters Declaration

Objectionable Text	Legal Objection(s)
<p><b>Paragraphs 1-9:</b> Qualifications and background.</p>	<p><b>F.R.E. 402:</b> Qualifications and background information not of consequence to the determination of Defendants' Motion to Dismiss because the conclusory "expert" testimony that follows is irrelevant, inadmissible and improper.</p>
<p><b>Paragraph 10:</b> "I have reviewed and analyzed the insurance policies of Bankers Standard Insurance Company and ACE ("Bankers") with the Plaintiff's counsel and from an underwriting perspective; I offer these preliminary opinions in this declaration."</p>	<p><b>F.R.E. 402:</b> It is unknown what specific insurance policies were reviewed by Mr. Masters. Further, the Defendants Bankers Standard insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 702:</b> There is insufficient evidence that Mr. Masters bases his conclusions with respect to the</p>

	<p>Defendants' insurance policies on "sufficient facts or data." There is also no evidence that Mr. Masters' conclusions are "the product of reliable principles or methods." Finally, to the extent that the testimony purports to summarize or explain the evidence or determine a fact in issue, the Court does not need Mr. Masters' "expert" assistance in order to understand the insurance policies at issue. (See authority cited above in connection with F.R.E. 402). To be admissible, expert testimony must assist the trier of fact to understand the evidence or to determine a fact in issue.</p> <p><b>F.R.E. 602:</b> To the extent that Mr. Masters offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p>
<p><b>Paragraphs 11-13 (in their entirety):</b> Quotation of policy provisions and Mr. Masters' interpretation thereof as applied to this case.</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior</i></p>

	<p>Court, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p>
	<p><b>F.R.E. 702:</b> There is no foundation that Mr. Masters possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provisions to this case.</p>
	<p>The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court to decide. <i>MacKinnon v. Truck Ins. Exch.</i>, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); <i>Waller v. Truck Ins. Exch., Inc.</i>, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. See, e.g., <i>Nationwide Transport Finance v. Cass Information Systems, Inc.</i>, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).</p>
	<p><b>F.R.E. 602:</b> To the extent that Mr. Masters offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p>
<p><b>Paragraph 14, Lines 5-11:</b> "From an underwriting standpoint, Bankers cannot use this limitation because there is a specific exception to this provision that clearly states that the Special Limits provision does not apply to personal property moved or being moved from the residence premises to a residence you</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal.</p>

1 newly acquire. Both the Colorado  
 2 dwelling and the California dwelling are  
 3 owned by the Harrisons at the time of the  
 4 loss. Both properties meet the definition  
 5 of 'residence premises'. The Colorado  
 6 property is a dwelling that the Harrisons  
 7 own or reside in. The California property  
 8 is a dwelling that the Harrisons own or  
 9 reside in."

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Rptr. 3d 787(2005) (quoting *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

**F.R.E. 702:** There is no foundation that Mr. Masters possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provision to this case. There is also no evidence that Mr. Masters' possesses the information to determine whether the "Colorado dwelling" and the California dwelling" were owned by the Plaintiffs at the time of loss, or whether both properties meet the definition of "residence premises."

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. See, e.g., *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).

	<p><b>F.R.E. 602:</b> To the extent that Mr. Masters offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p>
<p>6           <b>Paragraph 15 (in its entirety):</b> "The 7           personal property that was stolen was in 8           the process of being moved from a 9           dwelling the Harrisons owned to a newly 10          acquired dwelling they also owned."</p>	<p><b>F.R.E. 702:</b> There is insufficient evidence that Mr. Masters basis this conclusion on "sufficient facts or data." There is also no evidence that Mr. Masters' conclusion is "the product of reliable principles or methods." Finally, to the extent that the testimony purports to summarize or explain the evidence or determine a fact in issue, the Court does not need Mr. Masters' "expert" assistance to determine whether the stolen property was in the process of being moved from a dwelling the Harrisons owned to a newly acquired dwelling they also owned. To be admissible, expert testimony must assist the trier of fact to understand the evidence or to determine a fact in issue.</p>
	<p><b>F.R.E. 602:</b> To the extent that Mr. Masters offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p>
<p>22          <b>Paragraphs 16-18 (in their entirety):</b> 23          Quotation of policy provisions and Mr. 24          Masters' interpretation thereof as applied 25          to this case.</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendant Bankers Standard's policy is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36</p>

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Cal. 4th 495, 501, 30 Cal. Rptr. 3d  
787(2005) (quoting *Bank of the West,*  
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§ 1638. The "clear and explicit" meaning  
of contract provisions, "interpreted in  
their 'ordinary and popular sense,' unless  
'used by the parties in a technical sense or  
a special meaning is given to them by  
usage,' controls judicial interpretation."  
*AIU Ins. Co. v. Superior Court*, 51 Cal.  
3d 807, 799 P.2d 1253 (1990).

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**F.R.E. 702:** There is no foundation that  
Mr. Masters possesses a higher degree of  
knowledge, skill, experience, training, or  
education than this Court to determine the  
application of the referenced policy  
provisions to this case.

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The testimony invades the province of  
this Court. Under California law, the  
interpretation of an insurance policy is a  
question of law for the court. *MacKinnon*  
*v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3  
Cal.Rptr. 3d 228 (2003); *Waller v. Truck*  
*Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal.  
Rptr. 2d 370 (1995). An expert witness  
cannot give an opinion on an issue of law  
or provide legal conclusions. *See, e.g.,*  
*Nationwide Transport Finance v. Cass*  
*Information Systems, Inc.*, 523 F.3d 1051,  
1058 (9<sup>th</sup> Cir. 2008).

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**F.R.E. 602:** To the extent that Mr.  
Masters offers lay opinions as opposed to  
"expert" opinions, there is no foundation  
that the witness has personal knowledge  
of the matter.

1           **Paragraphs 19-20 (in their entirety):**  
 2           Mr. Masters' interpretation of Plaintiffs'  
 3           total claim amounts and coverage owed  
 4           under the policies.

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**F.R.E. 402:** The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Masters' "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." *Boghos v. Certain Underwriters at Lloyd's of London*, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

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**F.R.E. 702:** There is insufficient evidence that Mr. Masters bases his conclusions and calculations on "sufficient facts or data." There is also no evidence that Mr. Masters' conclusions are "the product of reliable principles or methods."

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 The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. *See, e.g., Nationwide Transport Finance v. Cass*

	<i>Information Systems, Inc.</i> , 523 F.3d 1051, 1058 (9 <sup>th</sup> Cir. 2008).
	<b>F.R.E. 602:</b> To the extent that Mr. Masters offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.

## II. Harrison Declaration

Objectionable Text	Legal Objection(s)
<p><b>Paragraph 3 (in its entirety):</b> "The lender for our home in Rancho Santa Fe, California required us to purchase a homeowner's policy covering fire, theft, etc."</p>	<p><b>F.R.E. 402:</b> The alleged requirement by the lender of Mr. Harrison's home in Rancho Santa Fe to purchase a homeowner's policy covering fire, theft, etc. is irrelevant and has no bearing on the issues presented in the instant Motion to Dismiss.</p>
<p><b>Paragraph 4 (following section):</b> "Coverage was also important to us as we were in the process relocating personal belongings from our home in Colorado to our other home in Rancho Santa Fe, California...I was informed that the policies provided coverage 'anywhere in the world' and that I had ample coverage of my properties. (See Exhibit 1)."</p>	<p><b>F.R.E. 402:</b> The importance of coverage to Mr. Harrison is irrelevant and has no bearing on the issues presented in the instant Motion to Dismiss. Further, the Defendants' insurance policies at issue speak for themselves. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial</p>

	interpretation." <i>AIU Ins. Co. v. Superior Court</i> , 51 Cal. 3d 807, 799 P.2d 1253 (1990).
4 5 6 7 8 9 10 11 12 13 14 15 16	<b>Paragraph 7 (lines 10-11):</b> "...was to be shared by Bankers, ACE and American Family (See Exhibit 2)."  <b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Plaintiff's subjective understanding is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i> , 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i> , 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i> , 51 Cal. 3d 807, 799 P.2d 1253 (1990).
17 18 19 20 21 22 23 24 25 26 27 28	<b>Paragraph 8 (in its entirety):</b> "I understood that my claims met the criteria for full coverage under my insurance policies."  <b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Harrison's subjective understanding is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i> , 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i> , 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation."

	<p><i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 802:</b> The Statement appears to be hearsay.</p>
<p><b>Paragraph 9 (in its entirety):</b> "According to the Senior Field Adjuster of ACE, my claim for personal property was supposed to be covered because it was not subject to a special limit (See Exhibit 3)."</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Harrison's subjective understanding is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 802:</b> Plaintiffs' statement is hearsay as Exhibit 3 entirely contradicts ¶9 of his declaration.</p>
<p><b>Paragraph 12 (in its entirety):</b> Accounting of property loss and claim amounts Mr. Harrison claims that his insurance carriers still owe.</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Harrison's subjective understanding is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code</p>

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§ 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

### **III. Panther Declaration**

<b>Objectionable Text</b>	<b>Legal Objection(s)</b>
<b>Paragraphs 1-6 (in their entirety):</b> Qualifications and background.	<b>F.R.E. 402:</b> Qualifications and background information not of consequence to the determination of Defendants' Motion to Dismiss because the conclusory "expert" testimony of Plaintiffs' attorney that follows is irrelevant, inadmissible and improper.
<b>Paragraphs 7-9 (in their entirety):</b> Quotation of policy provisions and Mr. Panther's interpretation thereof as applied to this case.	<b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Panther's "expert" interpretation of Defendants' policies is irrelevant and improper. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i> , 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i> , 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial

	<p>interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p>
	<p><b>F.R.E. 702:</b> There is no foundation that Mr. Panther possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provisions to this case.</p>
	<p>The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court. <i>MacKinnon v. Truck Ins. Exch.</i>, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); <i>Waller v. Truck Ins. Exch., Inc.</i>, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. <i>See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.</i>, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).</p>
	<p><b>F.R.E. 602:</b> To the extent that Mr. Panther offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p>
	<p><b>F.R.E. 802:</b> Hearsay as to information provided by his clients and others which form the basis of his "understanding" (i.e., ¶5 ("I am aware that my clients. . . ."); ¶7 ("I understand that. . . ."))</p>
<p><b>Paragraph 10, Lines 16-22:</b> "From an underwriting standpoint, Bankers and</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue</p>

1 ACE cannot use this limitation because  
 2 there is a specific exception to this  
 3 provision that clearly states that the  
 4 Special Limits provision does not apply  
 5 to personal property moved or being  
 6 moved from the residence premises to a  
 7 residence you newly acquire. Both the  
 8 Colorado dwelling and the California  
 9 dwelling are owned by the Harrisons at  
 10 the time of the loss. Both properties meet  
 11 the definition of 'residence premises'. The  
 12 Colorado property is a dwelling that the  
 13 Harrisons own or reside in. The  
 14 California property is a dwelling that the  
 15 Harrisons own or reside in."

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speaks for itself. Mr. Panther's "expert" interpretation of Defendants' policies is irrelevant and improper. "If contractual language is clear and explicit, it governs." *Boghos v. Certain Underwriters at Lloyd's of London*, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting *Bank of the West, supra*, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." *AIU Ins. Co. v. Superior Court*, 51 Cal. 3d 807, 799 P.2d 1253 (1990).

**F.R.E. 702:** There is no foundation that Mr. Panther possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provision to this case.

The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law for the court. *MacKinnon v. Truck Ins. Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); *Waller v. Truck Ins. Exch., Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. See, e.g., *Nationwide Transport Finance v. Cass Information Systems, Inc.*, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).

	<p><b>F.R.E. 602:</b> To the extent that Mr. Panther offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p>
<p>5           <b>Paragraphs 12-14 (in their entirety):</b>  6           Quotation of policy provisions and Mr.  7           Panther's interpretation thereof as applied  8           to this case.</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Panther's "expert" interpretation of Defendants' policies is irrelevant and improper. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p>
	<p><b>F.R.E. 702:</b> There is no foundation that Mr. Panther possesses a higher degree of knowledge, skill, experience, training, or education than this Court to determine the application of the referenced policy provisions to this case.</p> <p>The testimony invades the province of this Court. Under California law, the interpretation of an insurance policy is a question of law. <i>MacKinnon v. Truck Ins. Exch.</i>, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d 228 (2003); <i>Waller v. Truck Ins. Exch.</i>,</p>

	<p><i>Inc.</i>, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d 370 (1995). An expert witness cannot give an opinion on an issue of law or provide legal conclusions. <i>See, e.g., Nationwide Transport Finance v. Cass Information Systems, Inc.</i>, 523 F.3d 1051, 1058 (9<sup>th</sup> Cir. 2008).</p> <p><b>F.R.E. 602:</b> To the extent that Mr. Panther offers lay opinions as opposed to "expert" opinions, there is no foundation that the witness has personal knowledge of the matter.</p> <p><b>F.R.E. 802:</b> Hearsay as to the policy provisions.</p>
<p><b>Paragraphs 15-19 (in their entirety):</b> Mr. Panther's interpretation of Plaintiffs' total claim amounts, payments made under the policies, and coverage owed under the policies.</p>	<p><b>F.R.E. 402:</b> The Defendant Bankers Standard's insurance policy at issue speaks for itself. Mr. Panther's "expert" interpretation of Defendants' policies is irrelevant. "If contractual language is clear and explicit, it governs." <i>Boghos v. Certain Underwriters at Lloyd's of London</i>, 36 Cal. 4th 495, 501, 30 Cal. Rptr. 3d 787(2005) (quoting <i>Bank of the West, supra</i>, 2 Cal. 4th at 1264); Cal. Civ. Code § 1638. The "clear and explicit" meaning of contract provisions, "interpreted in their 'ordinary and popular sense,' unless 'used by the parties in a technical sense or a special meaning is given to them by usage,' controls judicial interpretation." <i>AIU Ins. Co. v. Superior Court</i>, 51 Cal. 3d 807, 799 P.2d 1253 (1990).</p> <p><b>F.R.E. 702:</b> There is insufficient evidence that Mr. Panther bases his</p>

1 conclusions and calculations on  
2 "sufficient facts or data." There is also no  
3 evidence that Mr. Panther's conclusions  
4 are "the product of reliable principles or  
methods."

5 The testimony invades the province of  
6 this Court. Under California law, the  
7 interpretation of an insurance policy is a  
8 question of law. *Mackinnon v. Truck Ins.*  
9 *Exch.*, 31 Cal.4th 635, 647, 3 Cal.Rptr. 3d  
10 228 (2003); *Waller v. Truck Ins. Exch.*,  
11 *Inc.*, 11 Cal. 4th 1, 18, 44 Cal. Rptr. 2d  
12 370 (1995). An expert witness cannot  
13 give an opinion on an issue of law or  
14 provide legal conclusions. See, e.g.,  
15 *Nationwide Transport Finance v. Cass*  
16 *Information Systems, Inc.*, 523 F.3d 1051,  
17 1058 (9<sup>th</sup> Cir. 2008).

18 **F.R.E. 804:** ¶16 & 17 are hearsay.

19 Dated: October 31, 2013

20 Respectfully submitted,  
21 COZEN O'CONNOR

22 By: /S/ Joann Selleck

23 JOANN SELLECK  
24 Attorneys for Defendant  
25 ACE CASUALTY AND INSURANCE  
26 COMPANY